

# EXHIBIT 1

I.H. Mel Suffet, Ph.D.

Page 1

IN THE UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

IN RE:

Methyl Tertiary Butyl : MDL NO. 1358 (SAS)  
Ether ("MTBE") :  
Products Liability :  
Litigation :

This Document Relates to:

City of New York vs.  
Amerada Hess Corp., et al  
Case No. 04 Civ. 3417 (SDNY)

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APRIL 30, 2009  
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Videotaped Deposition of I.H. MEL SUFFET,  
Ph.D., Volume 1, held in the law offices of Latham &  
Watkins LLP, 505 Montgomery Street, Suite 20,  
San Francisco, California beginning at 9:33 a.m.,  
before Sandra Bunch VanderPol, RPR, RMR, CRR, CSR  
#3032.

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Page 2

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12 PRESENT:

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Jay Finneburg, CLVS, Videographer

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Loren Seaby, Environmental Resource Analyst,

15 Sher Leff

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I.H. Mel Suffet, Ph.D.

Page 152

1 the '97, '98 time frame until the publication of this  
2 article?

3 A. Could you repeat that? I want to  
4 make sure I understood what you said. Was I -- I  
5 don't -- I'm not clear what you mean by "involved."

6 Q. I'll just withdraw the question.

7 Let me look at -- let me ask you to take a  
8 look at your -- keep the Stocking study, Exhibit 8,  
9 the 2001 published study in front of you, because  
10 we're going to look at it in some detail. But I also  
11 want you to have your expert report nearby.

12 In -- on the first page of the introduction  
13 of your expert report, that's Exhibit No. 2 -- I'm  
14 sorry, 1 -- Exhibit No. 1, you characterize  
15 Dr. Lawless as saying that the MTBE odor study that  
16 you worked on, the Stocking study, is the single-most  
17 valuable and reliable study of MTBE odor in drinking  
18 water.

19 Do you see that?

20 A. Yes, I see it.

21 Q. Okay. And do you agree that this is  
22 the most valuable and reliable study of MTBE odor in  
23 drinking water?

24 A. I think -- I think this -- this is.

I.H. Mel Suffet, Ph.D.

Page 192

1 Shen data from 1998 there. Do you see that?

2 A. Yes.

3 Q. Okay. And it looks to me, from your  
4 presentation or understanding of it, that -- well,  
5 and let me -- let me back up again.

6 You cite Shen in your expert report as a --  
7 as a valid -- valid scientific study with respect to  
8 MTBE odor thresholds, correct?

9 A. It's a valid study at the time it  
10 was -- in terms of the data that it has, yes.

11 Q. And it shows here that some panelists  
12 were able to detect MTBE as low as 2.5 parts per  
13 billion in at least six of the tests Shen and her  
14 colleagues ran; is that right?

15 MR. MOLLER: Objection. Form.

16 THE WITNESS: Once again, this is an  
17 individual range of panelists' identification. All  
18 geometric means are much above that. And we pick the  
19 value at 2 that is below the lowest value on the  
20 table at 2.5.

21 BY MR. ROBINS:

22 Q. Well, wait a minute. Geometric mean,  
23 that's not relevant to 6.1 in ASTM's E-679, which  
24 says -- is it? I mean, 6.1 says the concentration of

I.H. Mel Suffet, Ph.D.

Page 193

1 the levels of the test substance in a medium should  
2 begin well below the level at which the most  
3 sensitive panelist is able to detect, right?

4 A. That's correct. We're looking -- if  
5 you look at the data, the range is shown as 2.5 being  
6 the lowest value for an expert panel.

7 Q. Is it your position, Doctor --

8 A. Excuse me. Could I please continue  
9 with my statement?

10 Q. Absolutely. I -- I believed you were  
11 done.

12 A. I apologize if I interrupted your  
13 statement, but you -- you, in turn, interrupted mine.

14 So it has 2.5 for an expert panel. I think  
15 we have agreed, and it's my understanding and my  
16 scientific opinion, that expert panelists would be  
17 better than the general public in terms of  
18 identifying an odorant, and 2.5 was a panelist in an  
19 expert panel.

20 So we thought that by looking at that and  
21 looking at trying to cover the range to 100, because  
22 there were some values that were up in that -- up in  
23 that range, that we felt 2 was a valid point to pick.

24 If I had the study to do over again, I might

I.H. Mel Suffet, Ph.D.

Page 194

1 have picked a lower number. But this is the way we  
2 at the time felt was the correct scientific  
3 evaluation.

4 Q. Is it your position that 2 parts per  
5 billion is well below 2.5 parts per billion?

6 MR. MOLLER: Objection. Argumentative.

7 THE WITNESS: 2.5 --

8 MR. MOLLER: It calls for -- calls for -- it  
9 calls for a -- forget it.

10 MR. ROBINS: Calls for something.

11 MR. MOLLER: I don't know what it calls for.

12 MR. ROBINS: It calls for an answer.

13 MR. MOLLER: Well below? Okay. I'll call  
14 it vague. What do you mean by "well below"?

15 BY MR. ROBINS:

16 Q. What does the ASTM mean by it? You  
17 can answer the question as it is pending -- as it is  
18 posed.

19 MR. MOLLER: If you understand it.

20 THE WITNESS: I'm using 2.5 from an expert  
21 group. And if 2.5 is what the experts do, I don't  
22 expect a -- a consumer panelist to be measured -- to  
23 be able to evaluate -- to be able to observe below  
24 2. -- 2.5.

I.H. Mel Suffet, Ph.D.

Page 195

1           So we picked 2, thinking that a -- a  
2   consumer panelist might pick it out as 5 or 10 -- not  
3   5, but maybe 10.

4   BY MR. ROBINS:

5           Q.       You said if you had --

6           A.       And that's been our judgment by  
7   looking -- by looking at data for consumers. It's  
8   not just picked out of the air in a sense.

9           Let me clarify. If you look at consumers  
10   who have complaints, et cetera, about MIB and geosmin  
11   in the water, we find that the testing labs that do  
12   tests for analysis of this are much better than the  
13   consumers in terms of evaluating what they can read  
14   than what the consumers can read.

15          Q.       You said a few moments ago, if you  
16   had to do it over again, you might have picked a  
17   lower value for the bottom of the concentration  
18   scale. Why did you say that?

19          A.       If I knew that these consumers would  
20   pick -- would be able to possibly guess at 2, I might  
21   have picked a lower -- I would have picked a lower  
22   number. We had no understanding that that -- that  
23   would happen. We did the best scientific credible  
24   study at the time with the information that we had at



I.H. Mel Suffet, Ph.D.

Page 290

1 points.

2 Q. With a ruler and a pencil, or did  
3 they do a linear best fit or least squares apply?

4 A. I would have to look back at the  
5 original data. I assume they had -- they did have a  
6 statistician working on it, so I would assume it  
7 would be a best fit.

8 Q. And that best fit analysis allows you  
9 to look at any point on that line and look down and  
10 see the corresponding concentration, and look across  
11 and see the corresponding percent of the consumer  
12 panel correctly detecting, correct?

13 MR. MOLLER: Objection. Lacks foundation.

14 THE WITNESS: If -- if -- yes, that's --  
15 that's what it's showing.

16 BY MR. ROBINS:

17 Q. And do you view that to be a  
18 scientifically unreliable or inappropriate  
19 statistical analysis with odor threshold data?

20 MR. MOLLER: Objection. Vague.

21 THE WITNESS: They're just doing the same  
22 thing that I -- that was done in Figure 1. They are  
23 just plotting the data. And they -- they drew a  
24 line. That's fine.

REPORTER'S CERTIFICATE

I certify that the witness in the foregoing deposition.

I.H. SUFFET, Ph.D.

was by me duly sworn to testify in the within-entitled cause; that said deposition was taken at the time and place therein named; pages 1 through 318 of the testimony of said witness were reported by me, a duly Certified Shorthand Reporter of the State of California authorized to administer oaths and affirmations, and said testimony was thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for either or any of the parties to said deposition, nor in any way interested in the outcome of the cause named in said deposition.

IN WITNESS WHEREOF, I have hereunto set my hand this 6th day of May, 2009.

*Sandra Bunch VanderPol*

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SANDRA BUNCH VANDER POL, RMR, CRR  
Certified Shorthand Reporter  
Certificate No. 3032

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Page 320

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I.H. Mel Suffet, Ph.D.

Page 387

1 nothing to do with anything that I know as factual  
2 information.

3 And I -- I still agree with that statement,  
4 because Dr. Lawless knows full and well, as being a  
5 previous member of the ASTM committee that developed  
6 the -- the method that was used in the Stocking  
7 study, that you should not -- that you should use the  
8 data for geometric mean only, and you should use 1432  
9 for specific -- for specific things.

10 In fact, we talked about that yesterday, and  
11 he did that exact thing when he did his cottage  
12 cheese study.

13 Q. What evidence do you have that Harry  
14 Lawless entered into his work on this case with a  
15 pre-formed conclusion?

16 A. I don't have any -- any evidence that  
17 he did. I just have evidence -- I just have  
18 information by looking at how he evaluated the  
19 situation that I have -- that it appears that he has  
20 this pre-formed notion, because he knows -- he knows  
21 what the method is.

22 I don't even know if -- he could have voted  
23 on it, for all I know, to accept the method, if he  
24 was a member of the committee at that time. I know

I.H. Mel Suffet, Ph.D.

Page 431

1 "This gradation between detection, recognition and  
2 objection is conceded by Dr. Lawless and universally  
3 recognized in the field of drinking water science."  
4 That's the last part of that statement?

5 Q. Well, that's not the sentence I read,  
6 but yes.

7 A. But that's the last part of the  
8 statement. I want that on the record, because when I  
9 write a paragraph, and I write a statement, I like  
10 the whole statement to be presented. This is -- I'm  
11 not --

12 MR. MOLLER: The question is, is that your  
13 opinion in this case?

14 THE WITNESS: That's my opinion in this  
15 case. And those -- the whole paragraph is my  
16 statement. Yes.

17 BY MR. ROBINS:

18 Q. And is it your belief that the -- the  
19 gradation that you have described in this paragraph  
20 is applicable to MTBE?

21 A. Yes.

22 Q. What studies, if any, are you aware  
23 of that actually attempt to determine a rejection  
24 threshold for MTBE?

I.H. Mel Suffet, Ph.D.

Page 432

1           A.       No studies have been designed to  
2     determine rejection threshold. But if you look at  
3     Dale's studies, you could see a change from  
4     sweet to sweet solvent as you go up in higher  
5     concentrations, which indicates the -- which  
6     indicates the type of thing of detection -- detection  
7     and then recognition of one kind of odor slightly  
8     changing to a slightly different odor as you go up in  
9     higher concentration. And that -- that is an  
10    indication that there's detection, recognition and  
11    eventually there will be objection. And this is the  
12    kind of thing --

13           Q.       The Dale study --

14           A.       -- this is the kind of thing that  
15    Dr. Lawless presented in his wine study.

16           Q.       The Dale report doesn't contain any  
17    data or conclusions regarding the level at which  
18    consumers will reject or object to MTBE; is that  
19    right?

20           MR. MOLLER: Objection. Mischaracterizes  
21    the study.

22           THE WITNESS: I'd have to look at the Dale  
23    study to see if they said what you said or didn't say  
24    what you said.

I.H. Mel Suffet, Ph.D.

Page 436

1 A. Absolutely.

2 Q. Did you suggest to defense counsel at  
3 any point during your consultancy on this case that a  
4 MTBE rejection threshold study be done?

5 A. No.

6 Q. Why not?

7 A. I don't think it's necessary. I  
8 think the odor threshold concentration gives you the  
9 protection. And the Stocking data is more protective  
10 at 15, is as protective as you can be for New York.  
11 And New York is a 10, and I think it's going to  
12 protect the New York population at 10. And being a  
13 New Yorker, I want to protect the New York  
14 population.

15 I still root for the Yankees.

16 Q. What a shock. I'm a National  
17 leaguer, myself.

18 A. Well, I root for the Phillies because  
19 I live there.

20 Q. You grew up in Brooklyn and you root  
21 for the Yankees? That's awful.

22 A. Well, my father rooted for the  
23 Dodgers. How could I root for the Dodgers? When the  
24 Dodgers left town, I reject them. And I go to L.A.



REPORTER'S CERTIFICATE

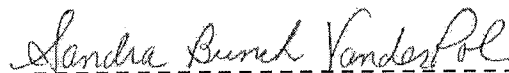
I certify that the witness in the foregoing deposition.

I.H. SUFFET, Ph.D.

was by me duly sworn to testify in the within-entitled cause; that said deposition was taken at the time and place therein named; pages 320 through 459 of the testimony of said witness were reported by me, a duly Certified Shorthand Reporter of the State of California authorized to administer oaths and affirmations, and said testimony was thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for either or any of the parties to said deposition, nor in any way interested in the outcome of the cause named in said deposition.

IN WITNESS WHEREOF, I have hereunto set my hand this 7th day of May, 2009.



SANDRA BUNCH VANDER POL, RMR, CRR  
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Certificate No. 3032